

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re OPTIONABLE, INC. SECURITIES
LITIGATION

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) DOCKET NUMBER: 07-cv-3753-LAK

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) HON. LEWIS A. KAPLAN
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**MOTION FOR LEAVE TO FILE SURREPLY IN RESPONSE TO NEW ISSUES
RAISED BY MONARCH CAPITAL FUND, LTD. ON REPLY**

For the reasons set forth in the accompanying Surreply in Response to the New Issues Raised by Monarch Capital Fund, Ltd. on Reply, and supporting Declaration, Lead Plaintiff movant, KLD Investment Management, LLC, respectfully requests leave to file the Surreply to address new issues raised for the first time in the Reply Memorandum of Monarch Capital Fund, Ltd. Courts in this Circuit have made it clear that they disfavor the raising of new issues on reply. *See, e.g., Rowley v. City of New York*, 2005 U.S. Dist. LEXIS 22241 (S.D.N.Y. 2005); *United States v. Letscher*, 83 F. Supp. 2d 367, 377 (S.D.N.Y. 1999); *Domino Media, Inc. v. Kranis*, 9 F. Supp. 2d 374, 387 (S.D.N.Y. 1998). However, when new issues are raised in reply, the courts have also held that a surreply may be submitted to respond to the new issues. *Lee v. Coughlin*, 26 F. Supp. 2d 615, 617, n.2 (S.D.N.Y. 1998) (allowing plaintiff a chance to submit a surreply to a new issue raised in defendant's reply); *Dietz v. Damas*, 948 F. Supp. 198, 200

(E.D.N.Y. 1996) (defendants permitted to file a surreply after plaintiff raised new issues in their reply).

Dated: August 10, 2007

Respectfully Submitted,

KAHN GAUTHIER SWICK, LLC

/s/ Kim E. Miller_____

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LLC and Proposed Lead Counsel for the
Class*

CERTIFICATE OF SERVICE

I hereby certify that this Motion was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants on August 10, 2007.

/s/ Kim E. Miller
Kim E. Miller